Supreme Court, U.S.
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No. 97-2056

IN THE
Supreme Court of the United States
OCTOBER TERM, 1997

MELANIE SATTERFIELD,
Petitioner,

v.

WAL-MART STORES, INC.
Respondent,

Petition For Writ of Certiorari
To The United States Court of Appeals
For The Fifth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

J. PRESTON WROTENBERY*
KEVIN D. JEWELL
MAGENHEIM, BATEMAN,
ROBINSON, WROTENBERY
& HELFAND, P.L.L.C.
3600 One Houston Center
1221 McKinney
Houston, Texas 77010
Tel: (713) 609-7790
Fax: (713) 609-7777
* *Counsel of Record*

Alpha Law Brief Company • Houston, Texas • (713) 270-6604

QUESTION PRESENTED

Whether Petitioner, Melanie Satterfield, gave her former employer, Wal-Mart, adequate notice of her need for FMLA leave due to an unforeseeable medical problem?

LIST OF ALL PARTIES TO THE PROCEEDINGS

1. Melanie Satterfield, Petitioner
2. Wal-Mart Stores, Inc., Respondent

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STATEMENT OF THE CASE

Respondent Wal-Mart directs the Court to the facts as accurately outlined in the opinion of the court of appeals, (Pet. App. 13a-23a), but Wal-Mart adds the following.

Wal-Mart hired Satterfield in December, 1992. At that time, Wal-Mart provided her with an Associate's Handbook and Associate's Benefit Book. Section M6 of the benefit book specifically describes Wal-Mart's leave of absence procedures, including those for medical leave. Notably, Wal-Mart's policy provides eligible employees leave benefits greater than those required by the FMLA. If employees have advance notice that leave will be required, they must submit a request for leave at least 30 days prior to the day the leave is to begin, "or as soon as practical after the associate learns of the need for leave." (Pl. Ex. 1, at M7). If leave is unexpected, "associates are required to notify their supervisor as soon as practical but not later than three days after the commencement of the leave." *Id.*

Upon her employment, Satterfield (a/k/a Birdsong) signed an acknowledgment stating that she had received a copy of Wal-Mart's policies and procedures, that she understood her employment was on an "at-will" basis, and that Wal-Mart had the right to "terminate the employment relationship with or without good cause and without prior notice." (Def. Ex. 2).

As observed by the Court of Appeals, Satterfield was quite familiar with Wal-Mart's leave procedures. In 1993 and 1994, Satterfield exercised her rights under that policy by requesting, and receiving, leave on several occasions. (Tr. Vol. I, p. 100-02, 121). As one example, in August 1994 she obtained a fourteen day leave due to her need to locate a new babysitter for her son. (Def. Ex. 2).

Moreover, Wal-Mart's absence policy allows for termination of an employee who incurs three unexcused absences. The absences do not have to be consecutive.

However, Satterfield missed work, without excuse and without requesting leave, on at least three occasions in the three weeks prior to her termination on June 16, 1995. (Tr. Vol. I, pp. 118-19). Satterfield's attendance record indicates she was a "no show", or "NS", on May 28, May 29, and June 3 of 1995. (Def. Ex. 2). It is undisputed that these three absences were not related to any "serious health condition."

On Friday, June 16, 1995, Satterfield did not come to work as scheduled. Because this was her fourth "no show" in three weeks, Mark Neighbors, the store manager, terminated Satterfield for excessive unexcused absences consistent with Wal-Mart's policy. (Tr. Vol. 1, pp. 155, 156-57). The written "exit interview" indicates that Satterfield never requested leave at any time prior to Neighbors' decision to terminate her employment, and Neighbors had no indication that Satterfield needed leave. (Tr. Vol. I. pp. 188, 190). Satterfield incorrectly asserts that "Neighbors fired [her] on June 16, 1995, because she failed to report to work *that day*," (Pet. for Cert. 8) (emphasis added), acknowledging, almost begrudgingly, that "Neighbors may have had in mind previous work absences." Satterfield goes on to falsely announce that "it is undisputed that he fired her because of her work absence on June 16, 1995, not because of previous work absences." (Petition, p. 8). This is *not* undisputed. In fact, Neighbors testified that he would *not* have terminated Satterfield only for missing work on June 16.

Satterfield's mother, Jean Grimes, delivered a note to Neighbors on June 16, 1995 which advised that Satterfield

was "sick" and authorized Grimes (who also worked for Wal-Mart) to pick up her pay check. Upon Neighbors' inquiry, Grimes told him that she did not know "what was wrong" with Satterfield. Satterfield further testified that the note stated that she was "having a lot of pain and that [she] wouldn't make it in to work that day, and could [she] make up that day on one of [her] day's off." (Tr. Vol. 1, p. 50). As a Wal-Mart employee, Grimes, like Satterfield, was aware of Wal-Mart's leave policies.

Later on June 16, Satterfield decided she should see a doctor. Because she did not have a telephone, she drove three blocks to a convenience store to call Dr. Gurav just before his office closed. She could not get an appointment until June 20, 1995. (Tr. Vol. 1, p. 52). At this time, Satterfield recognized the possibility that she was not going to be able to work before seeing the doctor, and she was scheduled to work from June 17-20. Yet, despite driving the three blocks to the convenience store to call her doctor, and despite the fact that she lived only five blocks from the store, she neither drove to the store to notify anyone that she had scheduled a doctor appointment nor telephoned her manager from the convenience store. Further, at no time did she request or pick up a leave form.

It is uncontroverted that Satterfield failed to appear for work on June 17-20. (Tr. Vol. I, pp. 105-06). The following Monday, June 19, 1995, Neighbors communicated his decision to discharge Satterfield to Helen Mills, the personnel manager, who performed the necessary paperwork. Satterfield's exit interview states that she was terminated for unexcused absences on 5/28/95, 5/29/95, 6/3/95, 6/16/95. (Def. Ex. 2). That same day, Neighbors informed Grimes that he had decided to terminate Satterfield because of excessive unexcused absences. (Tr. Vol. I, pp. 188-89). Grimes never indicated that Satterfield was ill or that she had

a medical condition which was preventing her from working. (Tr. Vol. I, p. 186).

On June 20, 1995, Satterfield saw Dr. Gurav, who prescribed pain pills and antibiotics. Satterfield next saw Dr. Gurav at the emergency room on the night of June 27, 1995, and was allegedly told that would need surgery. However, there are no notations in Dr. Gurav's records that surgery was necessary. (Tr. Vol. I, p. 117).

Satterfield made no effort to contact Wal-Mart until June 28, 1995, after the hospital informed her that her health insurance had been canceled. (Tr. Vol. I, p. 62). This was the first time she informed Neighbors of her condition. (Tr. Vol. I. p. 162). Dr. Gurav later provided Wal-Mart with a medical excuse dated June 28, 1995, stating that Satterfield had been under his care since June 20, 1995. However, the excuse did not say that her condition necessitated her absence from work on June 16, 1995.

SUMMARY OF ARGUMENT

Satterfield has presented no issue meriting this Court's attention. She has mischaracterized the questions presented and attempted to construct a conflict between the Court of Appeals' decision and two other cases. In reality, there is no conflict, and she makes no effort to discuss, or challenge, the true issue decided by the Court of Appeals - that her notice was inadequate as a matter of law. Her entire argument presumes that she gave Wal-Mart notice that FMLA leave was needed. She did not. The Court of Appeals' opinion creates no conflict with any decision from this Court or any other Circuit. Additionally, there exist other alternative grounds, argued below but not reached, which allow the result to stand. As no conflict exists, and no

important issue is raised, Rule 10 jurisdiction is not invoked. Therefore, this Court should deny the writ.

ARGUMENT

REASONS FOR DENYING THE WRIT

Although Petitioner cites 28 U.S.C. § 1254(1) as a jurisdictional basis for review, her challenge underscores the reasons for Supreme Court Rule 10. Rule 10 states:

> A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of reasons the Court considers:
>
> (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter ..
>
> (c) ...a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

SUP. CT. R. 10

Neither criteria is met here. In reality, this case presents nothing more than a legal determination of a fact specific inquiry. For the reasons that follow, this Court's

jurisdiction is not invoked under any prong of Rule 10. Therefore, the petition should be denied.

A. This case presents no important question of federal law to be "settled," thus Rule 10(c) jurisdiction is not invoked.

1. *Satterfield's mischaracterization of the questions presented attempts to evade the determinative inquiry.*

Initially, Satterfield's phrasing of her "questions presented" is suspect. She characterizes the first issue as "whether an employee seeking unforeseeable leave under the Family and Medical Leave Act of 1993 ("FMLA") is required as an initial matter to notify her employer of anything other than leave is needed." (Pet. for Cert. i). This question, as stated by Satterfield, would be answered in the affirmative by the Fifth Circuit's opinion here. (*See* Pet. App. 8a) (quoting 29 C.F.R. § 825.303: "[t]he employee need not expressly assert rights under the FMLA or even mention the FMLA, but may only state that leave is needed"). Satterfield implies by her first question presented that she advised Wal-Mart that "leave was needed." In fact, she did not. The crux of the case concerns whether the information Satterfield communicated to Wal-Mart was sufficient to "reasonably apprise [Wal-Mart] of [Satterfield's] request to take time off for a serious health condition." (Pet. App. 10a) (quoting *Manuel v. Westlake Polymers Corp.*, 66 F.3d 758, 764 (5th Cir. 1995)). The Fifth Circuit determined, in the context of an *unforeseeable* need for leave, that Satterfield failed as a matter of law to give adequate notice of her need for FMLA leave. This is the real issue presented by Satterfield. The Fifth Circuit correctly decided that issue against her.

Additionally, Satterfield's second question presented likewise presumes that she provided sufficient notice to Wal-Mart in order to shift the burden to Wal-Mart to obtain additional information regarding her claimed illness through informal means. She then wrongly argues that the Court of Appeals ignored the regulations by not concluding that Wal-Mart failed to "obtain additional information."

Satterfield's questions presented do not address the real issue decided by the Fifth Circuit, but rather raise tangential matters by presuming that the Fifth Circuit's conclusion that Satterfield gave inadequate notice is incorrect, but without actually arguing that point. Moreover, Satterfield's second question presented, and the argument contained in the petition relevant to that question, when viewed in light of the facts of this case, would place the entire burden on employers to investigate an employee's illness even when the only notification given is a sick call, which was the only notification given by Satterfield during the relevant time period.

Interestingly, Satterfield's second question presented also includes a statement that her illness *subsequently developed* into a serious health condition within the meaning of the FMLA. This statement tacitly acknowledges that Satterfield did not have a serious health condition on June 16, 1995, which was another argument made by Wal-Mart in the Court of Appeals, though not reached by that Court.

2. ***The Fifth Circuit correctly decided the true issue - adequacy of notice - and its opinion does not merit this Court's attention.***

Prior to *Satterfield*, the Fifth Circuit had considered notice requirements for unforeseeable leave only once, in *Manuel*, 66 F.3d at 758. *Manuel* did not establish any

categorical rules for the content of notice by an employee, but emphasized that the critical question is whether the information "imparted to the employer is sufficient to reasonably apprise it of the employee's request to take time off for a serious health condition." *Id.* at 764. Satterfield has not identified any case in conflict with this pronouncement.

The trial court is obliged to examine the legal sufficiency of the evidence upon the making of a timely Rule 50 motion. The Court of Appeals has a duty to give guidance to trial courts regarding what does or does not constitute legally sufficient evidence of notice. Satterfield's notice was so deficient that there is no legitimate, material fact question to present to a jury and no reasonable jury could conclude that she imparted enough information to "reasonably apprise" Wal-Mart of her need to take time off for a serious health condition.

Satterfield had a well documented history of missing work without excuse. When she was sick on June 16, 1995, she only advised Wal-Mart that she was "sick" and requested to make up the day at another time. Her mother could not provide Wal-Mart any details regarding Satterfield's illness. Certainly, there was no indication to Wal-Mart on June 16, 1995 that Satterfield would require more time off than one day only. Once her condition did not improve, and although she realized on June 16 the possibility that she could not return to work for some time, she still did not contact Wal-Mart herself, or through her mother, a co-employee, and missed the next four days she was scheduled to work. She could have easily contacted Wal-Mart from the same phone she used to call her doctor, or could have driven the additional five blocks to report in personally at the store. She did neither. In light of these facts, the Court of Appeals made a correct decision regarding a fact specific inquiry.

Satterfield has presented no issue which would potentially have such a broad impact upon FMLA cases generally so as to merit this Court's time. Therefore, Rule 10 jurisdiction is not invoked and the petition should be denied.

B. No real conflict exists between the Fifth Circuit's opinion and any opinion of this Court, or any other circuit.

Satterfield argues that the Court of Appeals' decision conflicts with this Court's opinion in *Chevron U.S.A. v. National Res. Def. Counsel*, 457 U.S. 837, 844 (1984). (Pet. for Cert. 20). There simply is no conflict. In *Chevron*, this Court addressed the question of "whether the EPA's decision to allow states to treat all of the pollution-emitting devices within the same industrial grouping as though they were encased within a single 'bubble' is based on a reasonable construction of the statutory term 'stationary source.'" *Id.* at 40. The Court stated:

> The power of an administrative agency to administer a congressionally created... program necessarily requires the formation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress... If Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation. *Such legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute.*

Id. at 843-44 (emphasis added). Satterfield focuses on the last sentence of the above quote to argue that § 825.303(b) is entitled to controlling weight and, because the Court of Appeals "declined to follow" § 825.303(b), it's opinion

conflicts with *Chevron*. Nothing could be further from the truth.

First, the quote from *Chevron* relied upon by Satterfield is taken out of context. Second, the Court of Appeals did not "decline to follow" § 825.303(b). Its holding is in no way inconsistent with the regulation, which requires that the employee "state that leave is needed." The point Satterfield evades is that she never stated that leave was needed, or anything close to such a statement which would place Wal-Mart on notice that leave might be needed. She merely called in sick, without a doctor's excuse, and her mother informed Wal-Mart that she did not know what was wrong. Therefore, the Court of Appeals' decision does not conflict with either § 825.303 or *Chevron*.

Next, Satterfield contends that the Fifth Circuit's resolution of her case conflicts with the Seventh Circuit's decision in *Price v. City of Fort Wayne*, 117 F.3d 1022 (7th Cir. 1997). (Pet. for Cert. 20-22). Again, there is no real, and certainly no intolerable, conflict between those cases. Part of Satterfield's argument in this regard is clearly misleading. For instance, she states: "[t]he Court of Appeals in the subject case holds that an employee seeking unforeseeable leave under the FMLA must provide her employer with additional information beyond simply that leave is needed." (Pet. for Cert. 21). This is not true. No reasonable reading of the Fifth Circuit's opinion would leave one with the impression that the Court was simply ignoring the plain language of the regulations and expressly requiring employees, when faced with an unforeseeable leave for need, to provide more information than that leave is needed. More accurately stated, the Court of Appeals concluded that Satterfield's notice was insufficient as a matter of law to reasonably apprise Wal-Mart that "leave was needed." The opinion raises no conflict whatsoever with the alleged "notice

requirement of the Seventh Circuit" in *Price* (i.e., that the employee need only state that leave is needed), which is identical to the regulation followed by the Fifth Circuit in this case.

Finally, the Fifth Circuit did not, as Satterfield suggests, shift the burden of obtaining and providing additional required information from the employer to the employee. Rather, the Court concluded that Satterfield's notice was legally insufficient to require Wal-Mart to make further inquiry before discharging Satterfield because the information provided could not lead any reasonable employer to suspect that an FMLA qualifying "serious health condition" might have been causing Satterfield's claimed illness.

Because there exists no conflict between the Court of Appeals' decision and any other decision of this Court or any circuit, the petition should be denied.

C. Other valid arguments Wal-Mart asserted in the Court of Appeals, but not reached by that Court, provide alternative grounds to allow this result to stand.

1. *There is no evidence Satterfield was suffering from a serious health condition on June 16, 1995.*

A serious health condition under the FMLA, is a condition that prevents an employee from performing the functions of her job. Family and Medical Leave Act, 29 U.S.C. §2612(a)(1)(D). It invokes either "in-patient care" at a hospital or a similar institution, or "continuing treatment by a health care provider." *Id.* at § 2611.

Here, there is no evidence that Satterfield was suffering from a serious health condition as defined by the FMLA prior to, or at, her termination. As noted previously, Satterfield implicitly concedes this point by stating in her second question presented that her illness subsequently developed into a serious health condition. Satterfield's own testimony establishes that she was not receiving inpatient care or continuing treatment by a health care provider when she missed work on June 16, 1995. (Tr. Vol. I, at 48, 52). In fact, the evidence indicates that Satterfield's condition on that particular day was not serious, as she did not attempt to contact Dr. Gurav's office for an appointment until right before he closed on June 16, 1995. (Tr. Vol. I, at 52). When Dr. Gurav's office informed Satterfield that the next available appointment was on June 20, 1995, she chose to wait five days to seek treatment. Additionally, she did not go to an emergency room. Satterfield was able to drive on June 16, 1995 and, in fact, drove to a pay phone. She did not see a health care provider as defined by the FMLA until June 20, 1995 for any medical condition for which she contended leave was required. (Tr. Vol. II at 339). Accordingly, Satterfield failed to establish that she was suffering from a serious health condition that would entitle her to FMLA leave at the time of her termination.

2. *Wal-Mart was justified in terminating Satterfield.*

Assuming, arguendo, that Satterfield could establish a prima facie case of discrimination under the FMLA, Wal-Mart has provided a legitimate, non-discriminatory reason for her termination: excessive unexcused absences. Satterfield's attendance record shows that she failed to show up for work on May 28, 29, and June 3, of 1995. (R. Ex. Tab 15). Satterfield admitted these absences were totally unrelated to any medical problems she had on June 16, 1995. (Tr. Vol.

I, at 119). Further, Satterfield acknowledged receiving the Wal-Mart Associate Handbook and Benefits Book which describes Wal-Mart's policies regarding attendance and how to request leave. (Def. Ex. 2). Finally, the exit interview expressly shows that Satterfield was discharged for three days unreported absences. (Def. Ex. 2). According to policy, Wal-Mart could have terminated Satterfield on June 3, 1995, because she had three unexcused absences. However, it elected to give her one more chance.

The issue is not whether Wal-Mart was correct in its belief that it was justified in terminating Satterfield, but whether it had a good faith reason for doing so. *Waggoner v. City of Garland*, 987 F.2d 1160, 1165-66 (5th Cir. 1993). The evidence clearly establishes that Wal-Mart had a non-discriminatory reason for discharging Satterfield.

3. *There is no causal connection between Satterfield's termination and her subsequent health problems.*

Additionally, to recover, Satterfield was required to establish that she was terminated "because" of her serious health condition. *See Oncale v. Sundowner Offshore Serv., Inc.*, 118 S. Ct. 998 (1998).

Satterfield failed to show up for work on May 28, 29, June 3 and 16 and Neighbors decided to terminate her. There is no evidence that when Neighbors decided to terminate Satterfield he knew she had a serious health condition. In fact, Satterfield's mother who also worked at the store and saw Neighbors on a regular basis, never told Neighbors that Satterfield was seriously ill. In addition, once the decision was made, but before Satterfield learned that she had been discharged, she had three additional unexcused absences. (Tr. Vol. I at 105). The only evidence of

discrimination is Satterfield's own subjective belief, which, of course, is insufficient. *Montgomery v. Trinity Indep. Sch. Dist.*, 809 F.2d 1058, 1062 (5th Cir. 1987). Here, there is no evidence that but for Satterfield's FMLA qualifying health condition she would not have been terminated.

Wal-Mart recognizes the importance of the FMLA; however, the statute should not be used by an employee who disregards an employer's reasonable work requirements relating to attendance and notification. Neighbors had no way of knowing Satterfield was attempting to use FMLA-qualifying leave. There is no evidence that Satterfield was under a doctor's care prior to her termination or that her medical condition prohibited her from working the day that she was terminated. The first time Satterfield notified Wal-Mart of any health condition was June 28, 1995, almost two weeks after she was terminated and more than one week after her first consultation with a physician regarding her condition. (Tr. Vol. I at 161). This, together with the fact that Satterfield did not notify Wal-Mart of the need to be absent from work, establishes that she never availed herself of a protected right under the FMLA and that no FMLA violation occurred.

Because there is no evidence to support the jury's verdict that Wal-Mart violated the FMLA, Wal-Mart is entitled to judgment as a matter of law regardless of whether the Court of Appeals correctly decided that Satterfield's notice was inadequate.

CONCLUSION

The Court of Appeals did not hold that employees like Satterfield must provide more notice than the fact that leave is needed. The Court of Appeals' decision does not conflict

in any way with *Chevron* or *Price*. Satterfield has not presented any significant issue in need of "settling."

For all these reasons, this Honorable Court should deny the petition for writ of certiorari.

Respectfully submitted,

J. PRESTON WROTENBERY
KEVIN D. JEWELL
MAGENHEIM, BATEMAN,
ROBINSON, WROTENBERY
& HELFAND, P.L.L.C.
3600 One Houston Center
1221 McKinney
Houston, Texas 77010
Tel: (713) 609-7790
Fax: (713) 609-7777
* *Counsel of Record*

ATTORNEYS FOR RESPONDENT
WAL-MART STORES, INC.